

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

KEVIN DEVON GIBSON, JR.,

Petitioner,

v.

COMMISSIONER, SOCIAL SECURITY  
ADMINISTRATION,

Defendant.

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Case No. 2:21-cv-0423-RSP

**MEMORANDUM ORDER**

Currently before the Court is the Motion for Attorney Fees Under the Equal Access to Justice Act (Dkt. No. 17), filed by Petitioner on February 24, 2023. The motion seeks compensation for 29.9 hours at the adjusted statutory rates permitted by the Act, for a total of \$6,841.11, without costs due to Petitioner’s IFP status. The Commissioner does not oppose the requested award of fees. (Dkt. No. 18).

The Equal Access to Justice Act (EAJA), 28 U.S.C. §2412, allows a prevailing party in litigation against the United States, including a petitioner for Social Security benefits, to recover his attorney’s fees “unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” *Id.* at §2412 (d)(1)(a). The Supreme Court has explained that “EAJA fees are determined not by a percent of the amount recovered, but by the ‘time expended’ and the attorney’s ‘hourly rate,’” which is statutorily capped. *Gisbrecht v. Barnhart*, 535 U.S. 789, 794, 122 S.Ct. 1817, 152 L.Ed.2d 996 (2002). *See generally, Murkeldove v. Astrue*, 635 F.3d 784, 789 (5<sup>th</sup> Cir. 2011). The Commissioner does not contend, nor does the Court find, that the position of the government was substantially justified or that any special

circumstances exist rendering an award unjust. The Court finds that Petitioner's requested fee is appropriate.

Accordingly, IT IS ORDERED that Defendant will pay Petitioner \$6,841.11 in EAJA fees. In accordance with the Supreme Court's decision in *Astrue v. Ratliff*, 130 S.Ct. 2521 (2010), this award will be payable to Petitioner, by delivery to his counsel of record, Michael T. Kelly of Gibson & Weisbrod, P.O. Box 821329, Dallas, Texas 75243.

**SIGNED this 6th day of March, 2023.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE